IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4091 OF 2005

WITH

WRIT PETITION NOS.4167, 4168 & 4498 OF 2005

WITH

WRIT PETITION NOS.4524, 4525 & 4526 OF 2005

W. P. No.4091/05:

The Maharashtra Cosmopolitan Education Society & Anr. ...Petitioners.

Versus

The State of Maharashtra & Ors. ...Respondents.

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W. P. Nos.4167, 4168 & 4498/05:

P. A. Inamdar & Ors. ...Petitioners.

Versus

State of Maharashtra & Ors. ...Respondents.

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Mr.T. N. Subramanium with Mr. Anil Kumar Joshi for the Petitioners.
Mr.A. A. Kumbhakoni, Associate Advocate General and Mr. Y.D. Mulani, AGP for the Respondents.

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W. P. No.4524/05:

Citizen Welfare Education Society & Anr. ...Petitioners.
Versus
The State of Maharashtra & Ors. ...Respondents.
W. P. No.4525/05:

Iqra Unani Medical College & Anr. ... Petitioners.
Versus
The State of Maharashtra & Ors. ... Respondents.

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W.P. No.4526/05:

Iqra College of Education & Anr. ... Petitioners.
Versus
The State of Maharashtra & Ors. ... Respondents

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Mr. Ashish Kamat with Mr. Anil Kumar Joshi for the Petitioners.
Mr. A. A. Kumbhakoni, Associate Advocate General with Mr. Y. D. Mulani, AGP for the Respondents.

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CORAM : A. P. SHAH AND
DR. D.Y. CHANDRACHUD, JJ.
July 13, 2005.

ORAL JUDGMENT (PER DR. D.Y. CHANDRACHUD, J.):

Rule, by consent returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. In this batch of petitions, the Court has been moved by several institutions established by religious and linguistic minorities who are protected by the provisions of Article 30 of the Constitution. These institutions which conduct professional courses in Dental Science, Unani Medicine, Physiotherapy and Education are aggrieved by the decision of the Pravesh Niyantran Samiti to reduce the management quota from 75% to 50% for the Academic Year 2005-06.

3. The facts lie in a narrow compass. The Pravesh Niyantran Samiti has been established by the State Government in pursuance of the directives of the Supreme Court in **Islamic Academy of Education vs. State of Karnataka**, (2003) 6 SCC 697. On 8th June 2004, the State Government issued a resolution prescribing the management quota in minority run institutions at 50%. Appeals were filed by several managements before the Samiti and on 16th August 2004, the Samiti enhanced the management quota to 75%. The Samiti noted in its order that the State Government had in its reply before the Samiti

stated that there was no objection to grant the same quota of 75% as has been granted earlier to other minority institutions. The State Government thereafter issued a Brochure notifying the rules for the Common Entrance Test for 2005-06. Clause 5.7.2 thereof was as follows :

> "5.7.2 Amongst the total seats at unaided private colleges, which are declared as "Minority Institutions" by the State Government, 25% of total seats of such a college will be at the disposal of the Competent Authority to be filled in from State level merit list of MHT-CET-2005 Examination and 75% will be at the disposal of the management and will be filled by the candidates of that particular minority community, as per directives of Pravesh Niyantran Samiti. The seats shall be filled in by the management of the concerned institutions on merit of CET conducted by Association of Minority Colleges."

4. None of the Petitioners had challenged the decision of the

Samiti of 16th August 2004 fixing the management quota at 75%. The State Government by its communications dated 20th May 2005 and 31st May 2005, however, notified that the management quota for the Academic Year 2005-06 would be 50%. These communications were based on a decision of 19th March 2005 of the Pravesh Niyantran Samiti which is in the following terms:

> "Item No.3 : To decide about the Appeals received for fixation of quota.
>
> The Samiti heard the representations made by the minority institutions for increase in the quota to 100%. Since the issue is pending consideration before the seven Judges Bench of the Hon'ble Supreme Court, the Samiti should not do anything in the matter. The appeals presented by the minority Institutions before the Samiti for 100% quota, for Academic Year 2005-06, are rejected, as the present issue is pending before the Hon'ble Supreme Court for final decision.
>
> The Samiti had granted 75% quota to the minority

Institutions in the last Academic Year 2004-05. The claim of minority institutions for the increase in the management quota is rejected. The management quota for the present Academic Year 2005-06 will be 50%."

5. The submission which has been urged before the Court is that there was no justification for the Samiti to reduce the management quota from 75% to 50% and that the Samiti was not within its jurisdiction to do so, there being no dispute raised before it by the private managements. Moreover, it was submitted that the Supreme Court had in its order dated 15th July 2004 in **P.A. Inamdar and others vs. State of Maharashtra and others** (SLP (Civil) 9932 of 2004 and connected matters) specifically directed the maintenance of a management quota of 75% pending disposal of the Special Leave Petitions before the Court. Hence, it was submitted that it was not open to the Samiti to reduce the quota.

6. The narration of facts in the earlier part of the judgment,

would demonstrate that the management quota was fixed at 75% by the Samiti on 16th August 2004. The Government of Maharashtra had stated that it had no objection thereto, having regard to the quota which had been allowed to other minority institutions. The Brochure published by the Government of Maharashtra notifying rules for the Common Entrance Test of 2005 stipulates that a quota of 75% would be at the disposal of minority managements. In this background, the decision of the Samiti to reduce the quota to 50% cannot be sustained for more than one reason. First and foremost, the Samiti owes its existence to the directions contained in para 19 of the judgment of the Supreme Court in **Islamic Academy of Education vs. State of Karnataka,** (2003) 6 SCC 697. The judgment of the Supreme Court inter alia provides as follows :

> "It is clarified that different percentage of quota for students to be admitted by the management in each minority or non-minority unaided professional college(s) shall be separately fixed on the basis of their need by the respective State

> Governments and in case of any dispute as regards fixation of percentage of quota, it will be open to the management to approach the Committee." (emphasis supplied).

7. In the present case, after the decision of the Samiti dated 16th August 2004, no dispute was raised as regards the fixation of the management quota and the managements were in any case not aggrieved by a quota of 75%. The Samiti was, therefore, not within its jurisdiction in seeking to reduce the quota from 75% to 50%. That apart, the attention of the Court has been drawn to the order of the Supreme Court dated 15th July 2004 in **P.A. Inamdar and others vs. State of Maharashtra and others** (SLP (Civil) No.3392 of 2004 and connected matters). The Supreme Court inter alia issued the following directions :

> "As far as the State of Maharashtra is concerned, it has fixed the quota at 75:25 in respect of minority professional institutions i.e. 75% in favour of the institutions and the

balance in favour of the State Government. The institution in this case has already admitted 75% of its quota by holding its examination and is in the process of admitting the rest. Having regard to the facts of the case, we permit the Petitioner to conclude the process as far as the management quota alone is concerned. This interim order will continue until the disposal of the Special Leave Petition."

8. Having regard to these directions of the Supreme Court which, it is conceded, govern the present batch of cases, the Samiti was, in our view, not justified in reducing the percentage from 75% to 50%. In the circumstances, these petitions will have to be allowed and are accordingly allowed. The decision of the Samiti to reduce the management quota for the Academic Year 2005-06 from 75% to 50% is accordingly quashed and set aside. The respective institutions, it is clarified, shall be entitled to a management quota of 75% for the ensuing Academic Year.

9. These petitions are accordingly disposed of. There shall be no order as to costs.

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